

## **HIKE AND BIKE TRAIL EASEMENT AGREEMENT**

THIS HIKE AND BIKE TRAIL EASEMENT AGREEMENT (this "**Agreement**") is made and entered into as of December 1, 2009, by and between CHAPEL CREEK HOMEOWNERS ASSOCIATION, INC., a Texas non-profit corporation ("**HOA**"), and the CITY OF FRISCO, TEXAS, a Texas home-rule municipality ("**City**").

### **RECITALS:**

- A. The HOA owns certain property located in Frisco, Collin County, Texas (the "**Greenbelt**") more particularly described as Tract A-1, Block A, Tract C-1, Block C and Tract F-1, Block F, Chapel Creek, Phase 2A, an addition to the City of Frisco, according to the Plat thereof recorded in Volume 2006, Page 110, Plat Records, Collin County, Texas (the "**Plat**").
- B. The HOA desires to grant to the City, and the City desires to accept, a non-exclusive easement on, over and across the Greenbelt for public hiking and biking purposes, including a ten foot (10') wide paved hike and bike trail and associated pedestrian bridges (the "**Trail**") and, among other things, to provide for the construction, replacement and maintenance of the Trail and Related Items (hereinafter defined) within the Easement (hereinafter defined).

NOW, THEREFORE, for and in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the HOA and the City hereby agree as follows:

1. **Grant of Easement.** The HOA hereby grants to the City, its successors and assigns, a non-exclusive perpetual easement for the benefit of the general public on, over, and across the Greenbelt for (a) hiking and biking purposes, (b) constructing, replacing and maintaining the Trail, (c) placing and maintaining signs, trash receptacles, art and benches intended to enhance the enjoyment of the Trail (collectively, the "**Related Items**"), and (d) landscaping and maintaining, except as provided herein, the Greenbelt as set forth in Section 3 below ((a)-(d) individually and collectively referred to herein as the "**Easement**"). All Related Items placed in the Easement and any landscaping undertaken by the City after the date hereof shall be subject to the approval of the HOA, including location, appearance, and materials, said approval not to be unreasonably withheld, delayed or denied.

2. **Maintenance by the HOA.** The HOA, at its sole cost and expense, shall mow the grass (if any) located within the Easement and Greenbelt and have the right (but not the obligation) to landscape or otherwise improve the portions of the Easement and Greenbelt adjacent to the Trail for the benefit of the residents of the Chapel Creek subdivision. Additionally, the HOA shall maintain the guard house like structures located within the Greenbelt. The HOA shall have no duty or obligation to protect the Trail or the Related Items against the effects of natural bank erosion or other force majeure events.

3. **Maintenance by the City.** The City shall maintain the Trail and the Related Items in good condition and repair (including, pruning and removing dead or diseased trees and tree limbs located within the Easement that threaten the safety of the public using the Trail) and in compliance with all applicable laws and ordinances at the City's sole cost and expense. The City shall make such repairs to the Trail and Related Items within thirty (30) days of receiving a written request by the HOA. However, the City shall have ninety (90) days to complete repairs that involve work which the City is required to competitively bid.

4. **Non-Exclusive Rights.** The Easement herein created is non-exclusive and the HOA reserves the right to grant such other easements, rights or privileges to such persons and for such purposes as the HOA in its discretion may elect, so long as such do not unreasonably interfere with the Easement granted herein.

5. **Existing Matters.** This Agreement and the Easement created hereby are expressly subject to all covenants, rights-of-way, and other matters of record, or visible upon inspection of the Easement. This conveyance is made without express or implied warranty.

6. **Indemnity.** TO THE EXTENT ALLOWED BY LAW, THE CITY HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD THE HOA HARMLESS FROM AND AGAINST ANY AND ALL LOSS, COST, LIABILITY, DAMAGE OR EXPENSE INCURRED BY THE HOA AS A RESULT OF, ARISING OUT OF, OR RELATED TO, THE CONSTRUCTION, INSTALLATION, REPLACEMENT, MAINTENANCE AND/OR USE OR MISUSE OF THE GREENBELT, TRAIL AND THE RELATED ITEMS BY THE CITY, ITS EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, AND/OR THE GENERAL PUBLIC, INCLUDING ANY INJURY TO PERSON OR PROPERTY, DEATH, OR CRIMINAL ACT RELATED THERETO. THIS INDEMNITY WILL APPLY EVEN IF SUCH LOSS, COST, LIABILITY, DAMAGE OR EXPENSE WAS CAUSED IN WHOLE OR IN PART BY THE ORDINARY OR GROSS NEGLIGENCE OF THE HOA BUT NOT BY THE WILLFUL MISCONDUCT OF THE HOA. THE OBLIGATIONS OF THE CITY HEREIN SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

7. **Insurance.** The City, at its expense, shall purchase and maintain at all times during the term of this Agreement sufficient insurance to insure both parties against all claims, demands or actions arising out of or in connection with the City's use of the Easement or the condition of the Trail whether such use be by itself, any agent or employee or the public. Such insurance shall name the HOA as an additional insured. The City may provide any of the foregoing insurance under a blanket policy or policies. The City shall furnish Owner with a certificate or certificates evidencing the foregoing insurance upon full execution of this Agreement.

8. **Waiver of Subrogation.** The City hereby releases and discharges the HOA from all right of recovery, claims and liability for damages to the Trail where such damage is or might be incident to any casualty customarily covered by the City's property insurance (whether or not obtained); provided that, this waiver shall not apply to any damage resulting from the intentional act of the HOA. The City agrees to notify its insurance company of the release contained herein and have its policies endorsed if necessary to prevent invalidation of coverage. The provisions hereof shall survive termination of this Agreement.

9. **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received upon being deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the HOA or the City, as the case may be, at the address set forth below, or if sent by overnight courier or by any other reasonable means, such notice shall be deemed received when actually delivered to and received or refused by the party to whom such notice is directed. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement shall be as follows:

If to the HOA: Chapel Creek Homeowners Association, Inc.  
5400 North Dallas Parkway  
Frisco, Texas 75034  
Attn: Jim Williams, Jr.

If to the City: City of Frisco, Texas  
6101 Frisco Square Blvd.  
Frisco, Texas 75034  
Attn: City Secretary

10. **Waiver.** No failure of any party to exercise any power given to such party hereunder or to insist upon strict compliance by any other party to its obligations hereunder and no custom or practice of the parties in variance with the terms hereof shall constitute a waiver of any party's right to demand exact compliance with the terms hereof.

11. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas

12. **Miscellaneous Provisions.**

a) **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.

b) **Consideration.** This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

c) **Authority to Execute.** The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

d) **Savings/Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

e) **Representations.** Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

f) **Miscellaneous Drafting Provisions.** This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.

Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

g) **Sovereign Immunity.** The parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

h) **Assignment.** This Agreement or any part thereof shall not be assigned or transferred by any party without the prior written consent of the other party.

i) **Successors and Assigns.** City and HOA, and their partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

j) **Heading.** The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.

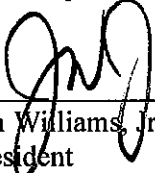
k) **Multiple Counterparts.** This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.

l) **No Third Party Beneficiaries.** Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the HOA and the City as of the day and year first above written.

**HOA:**

CHAPEL CREEK HOMEOWNERS ASSOCIATION, INC.,  
a Texas non-profit corporation

By:  \_\_\_\_\_  
Jim Williams, Jr.  
President

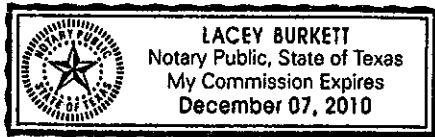
**CITY:**

CITY OF FRISCO, TEXAS,  
a Texas home-rule municipality

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

THE STATE OF TEXAS       §  
                                     §  
COUNTY OF COLLIN       §

This instrument was acknowledged before me on the 30th day of November, 2009, by Jim Williams, Jr., President of Chapel Creek Homeowners Association, Inc, a Texas non-profit corporation, on behalf of said corporation



Lacey Burkett  
Notary Public  
State of Texas

Lacey Burkett  
Printed Name of Notary

My commission expires:  
December 7, 2010

THE STATE OF TEXAS       §  
                                     §  
COUNTY OF COLLIN       §

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2009, by \_\_\_\_\_ of the City of Frisco, Texas, a Texas home-rule municipality, on behalf of said municipality.

\_\_\_\_\_  
Notary Public  
State of Texas

\_\_\_\_\_  
Printed Name of Notary

My commission expires:  
\_\_\_\_\_